IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 15959 of 2007(Y)

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PETITIONER:

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SELIN FRANCIS, AGED 49 YEARS,
W/O.FRANCIS, VADAKKUMPARAMBIL, VAZHAKULAM P.O.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
ERNAKULAM.

2. THE TAHSILDAR, KOTHAMANGALAM.

3. THE VILLAGE OFFICER, NERIYAMANGALAM.

4. SALES TAX OFFICER, KOTHAMANGALAM.

5. JAMES AUGUSTHY, S/O.AUGUSTHY,
KOYIKKAKUDY, NEAR KANGAZHA KAVALA,
KOTHAMANGALAM.

BY ADV. SHRI.MOHAMMED RAFFIQ, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**C.N.RAMACHANDRAN NAIR, J.**

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**WP(C) No. 15959 of 2007**

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**Dated, this the 6th day of June, 2007**

**J U D G M E N T**

Petitioner purchased defaulter's property and therefore recovery is initiated against the property by virtue of Sec. 26A of the KGST Act. Learned Government Pleader on instructions submitted that liability is for the year 2000-2001 and the present dues is around Rs. 1.41 lakhs. Next year's assessment is also pending. Petitioner purchased the property in the year 2003 and that too through an exchange of petitioner's property with the defaulter's. Obviously, since transfer is during pendency of the assessment, defaulter's property is subject to charge for sales tax under Sec. 26A of KGST Act. However if petitioner or the defaulter arrange to make payment, then there is no need to interfere with the exchange documents executed between parties. It is also open to the defaulter to challenge the assessment and if the appellate authority grants any relief, recovery will be limited to the actual tax sustained in appeal or other proceedings. It will be open to the petitioner to proceed for remedies against the defaulter. Since consideration of defaulter's property is the property transferred by the petitioner, through exchange deed, the Tahsildar is directed to

issue notice, attach and sell that property first and thereafter if required, attach and sell petitioner's property.

This WP(C) is disposed of as above.

**(C.N.RAMACHANDRAN NAIR, JUDGE)**

jg